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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,448	01/18/2002	Philip M. Lungo	LUNGO-US	5296

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ROCKFORD, IL 61101

EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT PAPER NUMBER

3728

DATE MAILED: 07/16/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/054,448

Applicant(s)

LUNGO, PHILIP M.

Examiner

Shian T. Luong

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

1. Claims 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 16, it is not clear how the pockets snugly fitted to the skirt. With respect to claim 19, the term "sufficiently closed" has no meaning.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Hedges (US 6,564,941). Hedges discloses a tool carrier adapted for resting on the top of a stepladder. The tool carrier comprising a generally rectangular top panel 15 and a skirt 11-14. A plurality of tool receiving pockets is carried on the skirt. A handle is connected above the top panel. An elastic strap is located on at least one of the panels about the structural member of a stepladder for adjusting the tightness of the carrier.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 6-7 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Hedges in view of Reynolds. Hedges discloses providing an elastic member on at least one panel, but did not disclose how many. It would be obvious to provide elastic members on all adjacent panels, as Reynolds teaches the use of an elastic member 310 to connect two separate panels 320,322 together.

6. Claims 4-5 and 10-13 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Hedges in view of Markson. Armstrong lacks a frame structure as recited in claims 4-5. However, Markson teaches a display device with an internal frame 20 to support an outer cover. The internal frame is attached to the cover panels. It would have been obvious in view of Markson to provide an internal frame in the carrier of Hedges to provide a stronger and durable carrier.

7. Claims 8-9 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 6, further in view of Markson. Armstrong lacks a frame structure as recited in claims 4-5. However, Markson teaches a display device with an internal frame 20 to support an outer cover. It would have been obvious in view of Markson to provide an internal frame in the carrier of Hedges to provide a stronger and durable carrier.

8. Claims 14-15 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 12, further in view of Reynolds. Reynolds teaches the use of an elastic member 310 to connect two separate panels 320,322 together. It would have been obvious in view of Reynolds to provide an elastic member between the panels

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of Hedges to allow the cover to stretch over a larger size ladder since Hedges has disclosed the need to do so.

9. Claims 16-19 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Waterston et al (US 5,097,975) in view of Official Notice of Malvasio (US 6,138,963).

Waterston et al. discloses a receptacle with a bottom, an open top, vertically extending body and an opening cavity for receiving contents therein. A pair of generally vertical elongated legs connected to the body. A downwardly opening slot is formed between the legs. What Waterston et al. lacks is the tubular cross-section. Malvasio discloses a tube having a generally vertically extending cavity and having a generally upwardly facing surface. A pair of elongated legs (each top edge of the element 27 is considered as a leg) extending from the tube through a connection portion. A slot is formed between element 27 and the tube. Also, a change in aesthetic (ornamental) design generally will not support patentability. In re Seid, 73 USPQ 431. Hence, it would have been obvious to change the size of the body to tubular shape since any shape would work equally well.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The **Group clerical receptionist number is (703) 308-1148** or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Valerie Douglas at (703)308-1337.


For applicant's convenience, the Group Technological Center FAX number is (703) 305-3579 or (703)305-3580. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on T-F from 7:00am to 4:00pm EST.

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STL  
July 10, 2003

  
Primary Examiner  
Shian Luong  
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